UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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In Re: Petrobras 14-cv-9662 (JSR)

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New York, N.Y.
February 23, 2018
2:10 p.m.

Before:

HON. JED S. RAKOFF

District Judge

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and Plaintiffs North Carolina and the Class
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(Case called)

THE COURT: Please be seated.

I think we're now using the same docket number, but it's In Re: Petrobras Securities Litigation.

Would counsel please identify themselves for the record.

(Appearances taken)

THE COURT: So, everyone, good afternoon and welcome. We're here for a preliminary hearing on the proposed settlement.

I do have some questions, but if plaintiffs' counsel, who has made the unopposed motion for preliminary approval wants to say anything first, I'd be happy to hear him.

MR. LIEBERMAN: Your Honor, thank you very much. Just a few words to try to limit the fanfare with respect to the adequacy of the settlement. The settlement proposed to the Court and submitted to the Court is comprised of two parts, $2.95 billion paid from Petrobras to defendants and $50,000,000 from PwC Brazil.

This settlement in the aggregate, $3,000,000,000, is the largest class action settlement in a decade, securities or otherwise. It is the largest class action involving a foreign issuer. It's the fifth largest securities class action settlement on record.

THE COURT: Those are very nice things and certainly

not irrelevant, but the question, of course -- or one of the questions -- is how much the class is getting in terms of what percentage of what their expected damages would be so that if in fact you had a settlement which was not this, in which was $3,000,000 but the damages that plaintiffs asserted were $300,000,000, that would not be such a great settlement.

So the total amount -- this is a big case -- so the figures are big. I guess one question I have -- this is partly for defense counsel.

The question I have for defense counsel is your position throughout has been that the company was a victim, not a wrongdoer. So why in the world are you paying anything?

I'll come back to plaintiffs' counsel in just a minute.

MR. LIMAN: Your Honor knows that the positions of counsel and the parties are not always accepted by the adjudicators.

From the clients' perspective, they've thought long and hard about this case. They've had many meetings of the board and have determined that it is in their best interests to resolve the litigation in the United States; resolve the exposure in the United States, which is large; and to be able to move forward without that hanging over their head. We believe that there are meritorious defenses, but we also recognize that there are vagaries and risks of litigation, and

witnesses can be --

THE COURT: So you think $3,000,000,000 is a nuisance value?

MR. LIMAN: No. It's a lot of money. It's a lot of money, and we think that the plaintiff class has done quite well in this case.

THE COURT: So let me ask plaintiffs' counsel who I rudely interrupted, but it won't be the last time.

So you say in your papers, in answer to the question I just raised, that this represents 22.3 of the likely recoverable damages or 18.6 percent of the likely recoverable damages on a different statistical analysis which compares, you say favorably, to the overall return in many, many class actions looked at collectively. But this is not like other class actions. The comparable class actions to this are the few giant class actions.

What was the return in those? Do you know?

MR. LIEBERMAN: Your Honor, I don't have the percentage of recovery. I don't believe it did get to 22 percent. I'm quite certain that's the case, but I wouldn't want to make a representation without knowing factually.

THE COURT: By the way, what would be the percentage if there were no attorneys' fees?

MR. LIEBERMAN: If there were no attorneys' fees -- we'll be requesting --

THE COURT: I know you're requesting 9 1/2 percent, which is a modest what? $285,000,000?

MR. LIEBERMAN: Yes.

THE COURT: But a person's got to live after all.

This will not be the case. Assuming you got zero but just for statistical reasons -- I'll phrase the question differently.

What percentage of this 23 or 18 percent is attorneys' fees?

MR. LIEBERMAN: So, your Honor, if you took away from the $3 billion sum, if you assume all, there would probably be around $300 million or $305 million in either attorneys' fees', expenses, or claims administration. So you'd be left with about $2.7 billion, and comparing that number to the number of $15 billion if you do 95 percent or $17.1 billion if you do the 90 percent. I haven't done that math. I'm pretty sure it could be done pretty quickly and someone could get that for me.

You're taking away about 10 percent or so from the settlements.

THE COURT: I see your colleague just handed you maybe his computation. I didn't realize he had that many toes and fingers.

Anyway, what --

MR. LIEBERMAN: It's around 20 percent, your Honor, if you're going at a 22 percent recovery. I think though what's

very important to understand is the damages figure that we've submitted to the Court as a benchmark because it was quite unique, I must say, your Honor.

I think we're very fortunate in this case in that we do have an objective comparative metric to compare this settlement to other similar cases. Namely, the damages model that we have submitted as part of our expert report was peculiarly aggressive, your Honor.

We think it was an accurate number. It was a number that really contemplated 21 alleged corrective disclosures. If you look at other mega settlements, nothing compares to the 21, your Honor. There are no large class actions, *Enron*, *WorldCom*, etc., that alleged such a large amount of disclosures.

That was a very aggressive model that was used, we think appropriately so, but it was extraordinary, your Honor. If you look at actually the opt-out cases, we estimate about 20 percent of the class had opted out.

If you would apply, based on their alleged corrective disclosures to the remainder of the class, damages would be about $5 billion or $5.5 billion. So now you're comparing $2.7 billion left after the fees and expenses to that $5.5 billion and we're still over 50 percent, your Honor. That is actually objectively a fantastic result.

THE COURT: So you want to argue that there was something to the defense position here. So we might think

about their corrective analysis and compare the return to what, even though if the litigation had gone forward, you would take the position that their corrective analysis was wrong.

MR. LIEBERMAN: Your Honor, the position we're taking is that ours is the correct analysis, but I think it has to be understood in the context of the alleged damages how unique the claim of damages that we were proposing to the Court.

It was unique. We do think it was accurate. We do think it was sustainable in a court, but we have 20 odd complainants of very sophisticated attorneys representing very sophisticated pension funds.

And if you were to take those damages, they would be about $5.5 billion. So these are not defense numbers. These are plaintiffs' numbers, and there we're exceeding 50 percent. So I think that then, your Honor, that is a proper context for the numbers.

I'm not proposing that that's the appropriate number. There's a reason why we proposed the number that we did, but it's a very important context. I can tell you that I personally spent about 400 or 450 hours with our damages expert working on it figuring out the best way that we could present damages in a way that was appropriately aggressive, your Honor.

THE COURT: So you raised a minute ago -- you raised more expressly in your papers -- that this is also a good settlement in comparison with the settlements that have already

been entered into with the opt-out or tag-along institutions.

What was their settlement?

MR. LIEBERMAN: Your Honor, I don't have their settlement papers. Those are confidential. All we have is a reasonable inference that the charges that were taken along with those settlements are $448 million, and that represents about 20 percent of the outstanding securities in this case, possibly a little more.

So, if you take that $448 million, multiply it by about 20 percent of the class opted out, we've got 80 percent remaining -- I hope I have enough fingers to do this math -- but if you multiply that number by 4 using to see what the class should have gotten, using that number, we'd be at about $1.7 million or $1.8 million.

So this number here is $3 billion, taking in attorney's fees, etc. They also charged attorneys' fees. So, taking this number, we've got $1.3 billion dollars or $1.2 billion in excess of that. That's more than 60 percent, your Honor.

If you want to talk about history, that's actually history, your Honor. The perceived wisdom is that opt-outs always do better. You've got large institutions --

THE COURT: So let me ask defense counsel. First of all, without commenting on any individual under the settlement, do you agree with the analysis made by plaintiffs' counsel?

MR. LIMAN: I'm not sure I agree with every number, but I agree with the bottom line proposition that in gross, the plaintiff class here did better than the individuals plaintiffs.

THE COURT: Are there any remaining opt-outs?

MR. LIMAN: There are, your Honor.

THE COURT: Who are they?

MR. LIMAN: There are 13 different opt-outs. They are all members of the settlement class here, and our hope is that they will decide to participate.

THE COURT: Are they all institutions as opposed to individuals?

MR. LIMAN: Yes, they are. They are.

THE COURT: What percentage of the total number of shares did they hold collectively?

MR. LIEBERMAN: Your Honor, our understanding -- and Mr. Solano can correct me if I'm wrong -- is that the remaining opt-outs are a small, a very small slither of the outstanding shares, but the majority, the bulk of the opt-outs had already settled.

MR. LIMAN: I concur. We don't know in part because we don't know in the individual cases how many shares are at issue in each of those cases. That hasn't been shared with us.

THE COURT: I'm surprised you don't know this because I thought the whole point of that side agreement, one of the

two side agreements that have now been disclosed, was that if more than 5 percent disapproved the settlement, opted out or whatever, that the settlement was dead.

MR. LIMAN: It excludes the opt-out cases.

THE COURT: I see. Let's talk about legal fees. First of all, if a notice goes out, my normal practice -- and I see no reason to change this -- is to notify each and every member of the class in dollar terms, as well as percentage terms, what the legal fees that are being sought are because I think that's clearly a material factor for anyone who wants to know whether they should join in this settlement or object to it or opt-out. So we'll get to notice later. While it's on my mind, I wanted to mention that.

I looked at the legal fees on a percentage basis of the settlement in a few major cases that I had some familiarity with such as the WorldCom case, such as the Bank of America case, and one or two other cases. And they were mostly in the 4 to 5 percent range.

So why in the world, in a giant case like this, should I consider a 9 1/2 percent legal fee?

MR. LIEBERMAN: Your Honor, I think there is more -- there are a lot of mega settlements where -- *Enron* I believe was more than a 10 percent legal fee. In the *Tyco* case, it was well above 10 percent. So I think we're happy to make that presentation, but we would suggest that the less than 9 1/2

percent that we'll be proposing as a fee -- it will be about 9.4 percent --

THE COURT: I would certainly welcome any submission that you want to give me on mega cases, for lack of a better term.

What was your Lodestar?

MR. LIEBERMAN: The Lodestar, your Honor, was about $160 million.

THE COURT: $160 million. How did you spend $160 million in hourly rates?

MR. LIEBERMAN: Your Honor, not happily I can say, your Honor. This was a case -- and I think if we compare it to other mega settlements, we had gotten a lot closer to trial than those cases. We were six weeks away from trial.

THE COURT: I cannot help but mention that the big issue in this case is whether Petrobras is a perpetrator or a victim, and the result of this settlement, which may be a wonderful settlement -- and I may approve it -- is that no one ever will know the answer to that.

Go ahead.

MR. LIEBERMAN: Fair enough, your Honor. I don't think that's the only issue in the case.

THE COURT: No. It's not the only issue.

MR. LIEBERMAN: Damages would be a key issue.

THE COURT: I am sure that as in every settlement

conference I've ever held, you will tell me how good the arguments from the other side were, and he will tell me how terrifying the plaintiffs' arguments were, and you both hope I don't remember your earlier papers when you each said that each side's arguments and the other side's arguments were terrible. Go ahead.

MR. LIEBERMAN: Your Honor, we would have hoped to have lived to see the day when we got to trial, your Honor. This case has been stayed for 18 months which has been very taxing with respect to the case.

THE COURT: You know whose fault that is, and it's not the district court.

MR. LIEBERMAN: That's correct, your Honor. Certainly not. The rocket docket was run, and the fact that we're here at settlement after such a delay I thinks does speak to the Court's speed as an adjudicator.

Nevertheless, your Honor, we potentially were looking at a Supreme Court appeal. We don't know as to how that appeal would have succeeded, particularly with the bonds. The bonds here represent about 25 percent of the class.

I, quite frankly, don't know how your Honor would have ruled with respect to class certification for the bonds, given the Second Circuit's guidance. A lot of times we think we know how this Court is going to rule, and we're taught otherwise.

So, if we lost that 25 percent on the bonds, we're

looking at a much lower number. So the risk there was quite large, both from the bonds we'd say and from the damages.

THE COURT: You're saying you had no ascertainability as to how this Court would rule?

MR. LIEBERMAN: No, your Honor. We didn't. We only had hopes, high hopes, your Honor.

THE COURT: Go ahead.

MR. LIEBERMAN: So I think in that context, we were looking at really putting together a trial, summary judgment on issues. Do we think the Court would have ultimately ruled on the victimhood, that that would have been an adequate defense to shield Petrobras from liability? Likely no, your Honor.

THE COURT: So let's go back. Let's assume your Lodestar was fine. Give me that figure again.

MR. LIEBERMAN: About $160 million.

THE COURT: So why shouldn't I give you $160 million?

MR. LIEBERMAN: Because of the significant risk that's been taken in this case, the significant result that's been made in this case. We have a result here that's over 50 percent better than attorneys who may have charged even more on their fees than we're seeking today. It actually might be a discount for the class.

I think very importantly, your Honor, is we have a sophisticated institutional investor that negotiated this fee with counsel, not only on his own, hired outside counsel to

look at the fee request at the outset of litigation, and actually they had negotiated us down significantly from where our initial proposal was.

With their outside counsel, they came to this number. It's an aggregate. It's actually a staggered fee, but in the aggregate it turns to about a little less than 9.5 percent.

I think it's very important. If the Court had seen those numbers when it was presented, of course the Court wouldn't commit to granting those numbers. We understand that.

But I can say, running a case that has the cost of this case, your Honor can question whether or not we needed to have a Lodestar of $160 million. I can tell you, given the multipliers that justify the fee, we didn't need to.

As far as if we're just trying to look good for a fee, the work needed to be done. We had 20 million documents to review. We had 65 depositions that were taken. There was significant economic expense by the firm.

We can say the partners personally took a tremendous liability in order to finance this case, never invited a funder in because we were worried that we would lose control of the case.

So three years of litigation, negotiating the case, back and forth, mediation, and economics do obviously impact case management. If we're always thinking the entire three years 9.5 percent is the fee and then we learn, well,

Judge Rakoff didn't think so. It's actually half of that, your Honor, that could be a staggering result not just in this case but in cases going forward. Certainly there's no visibility at the outset of the case what the fee would be. Respectfully, your Honor --

THE COURT: It would mean that people, if I follow your point, it would mean that class actions of this size would only be brought when plaintiffs' counsel were really, really sure they had a winning case.

What would be so wrong with that?

MR. LIEBERMAN: Your Honor, we think it's not only really, really sure cases that should be brought. It's cases that should be credible that should be brought. That's a standard lower.

Even more importantly, it's no secret to anybody that economic decisions are made at the outset of a case as to the value of the case and ultimately the fees --

THE COURT: How can it be right that the Court should determine legal fees in any material way based on calculations that you privately made at the outset of the case? That sounds to me like the tail wagging the dog.

MR. LIEBERMAN: It wasn't private, your Honor. It was actually before the Court. The Court was well aware --

THE COURT: I don't recall expressing any view of that.

MR. LIEBERMAN: That's correct. There was obviously no commitment. That wasn't the case. We can just say the Court will grant or deny, however it wishes, this fee. We always understood that.

We can say, as a matter of practice, if you're going in with a large institutional investor negotiating not just with that institutional investor but with its outside counsel and ultimately you're presenting those fees and you're deemed at that stage to at least be competitive, and then people do decide what investment should you make in the case, what investment would be worthwhile. And to learn thereafter that, okay. Your fee is actually half of what you thought. Your investment decisions were completely foolhardy, will we survive. Of course we'll survive. I don't think anyone will cry.

THE COURT: On that theory, if you had said, gee, we shouldn't really take on this case unless we get 50 percent of the return, so then you had in my hypothetical applied now for 50 percent and I had said something judicious like you must be nuts, and you would say, oh, but Judge, this was the calculation we made at the time we entered into this case. So it will send the wrong message if you don't abide by our calculations, I don't understand that argument.

MR. LIEBERMAN: Your Honor, you're right. What your Honor just stated would not be an appropriate thought

process. An appropriate thought process would be that if under the case law and under jurisprudence and under the agreement with a sophisticated institutional investor, as the PSLRA had intended, there is an understanding as to what an appropriate fee is.

And based upon that very learned decision, which is all based on prior jurisprudence and based on the prior protocol that we've discussed, and then to learn that you completely wildly miscalculated what your return on investment here, your Honor, it would ultimately wreak havoc on decision-making with respect to these cases, we respectfully submit.

With that being said, your Honor, we are happy to present -- it's not about what Pomerantz expected to make here, your Honor. That's certainly not the question. The question is what is an appropriate fee.

One of the key issues in what an appropriate fee is what was negotiated with the client. There was a marketplace here, your Honor. There was a marketplace with a very sophisticated institutional investor who was actually guided by outside counsel who is an expert in U.S. securities class actions.

So that goes to the appropriateness of the fee. But what would also go to the appropriateness of the fee is the prior jurisprudence which we'll be happy to present, either at

this stage or at the final approval hearing, which is when, we would submit, it's most appropriate, and get the work done.

THE COURT: I don't think it's going to be decided until the final hearing in terms of any ultimate decision, both by definition but because I'll need to hear from any objectors who wish to be heard.

Speaking of your client, you're asking for a $400,000 incentive fee. I don't know why it's called an incentive fee.

MR. LIEBERMAN: I think it was called a compensatory award. If we said incentive, we misspoke.

THE COURT: In any event, I've had cases where it's been $5,000, $10,000.

In what case has it been anything like $400,000?

MR. LIEBERMAN: Your Honor, it's $400,000 for all three plaintiffs combined. We will present to your Honor the work that was done by Mr. Hill who I think you've seen at every single hearing in this litigation, the tremendous document production that was done as a part of this case.

THE COURT: Let's talk about document production.

Now, what role did your client or the three clients, whatever, play in document production?

MR. LIEBERMAN: Your Honor, going through USS' files to get the very, we felt burdensome at the time, perhaps appropriate, document request that defendants had propounded and to do it in a way where we wouldn't have --

THE COURT: You of course didn't answer any documents.

Go ahead.

MR. LIEBERMAN: Yes. Going through that process. USS going through that process and North Carolina and Hawaii was -- sitting for three depositions with respect to USS, Hawaii sat for two. North Carolina sat --

THE COURT: I understand sitting for depositions. You were referring to the document production.

MR. LIEBERMAN: Right. Your Honor, we can provide a factual record, again, at the appropriate time. What we'll submit is we will make the relationship between the fees requested and the ultimate time that's been taken out of Mr. Hill's time, his colleagues' time, and the deputy --

THE COURT: For you, I will obviously want for the lawyers time sheets.

Do you have the equivalent for the clients' work?

MR. LIEBERMAN: He says that could be produced, your Honor.

THE COURT: What about the other clients?

MR. LIEBERMAN: He says yes, your Honor.

THE COURT: That would be very helpful.

MR. LIEBERMAN: We would submit, your Honor, with respect to that request, it should be tethered to the time spent, and there should be a relationship between the time spent and the fee requested.

We completely agree with this. What we would say is that the efforts and time spent by USS and North Carolina being a steward for this, we believe, excellent result has been significant, substantial, and we think it should be --

THE COURT: I have no difficulty. I appointed counsel in part based on the notion that the clients that I had -- the representatives, the class representatives that the Court had chosen, were going to be very hands on. So, if they had failed in that duty, which they clearly did not, I would have been very disappointed.

But I'm unclear how, for example, they would play any material role in document production for example.

MR. LIEBERMAN: Your Honor, we'll document the substantial efforts there were in producing the documents relevant to the depositions and the discovery propounded by the defendants.

THE COURT: So we should put some timeframe on that. After I issue my order, assuming that I preliminarily approve this settlement, I'll want the Lodestar and the similar documents relating to the fee for the plaintiffs, what? Two weeks?

MR. LIEBERMAN: Your Honor, I think our side to organize that -- what we proposed in the schedule was 42 days before the final hearing. If your Honor wants it earlier than that, we certainly can do so. If you can give us five weeks to

put everything together.

THE COURT: I forgot what you had proposed in the schedule. Presumably you already have your hourly notations. Yes?

MR. LIEBERMAN: Your Honor, we do. We would lake to --

THE COURT: So you could in theory produce them tomorrow?

MR. LIEBERMAN: We could produce them in an hour, but in a way that your Honor can digest.

THE COURT: What takes five weeks?

MR. LIEBERMAN: As long as your Honor would give us.

THE COURT: We'll look at that in a minute.

While we're on the subject of legal fees, what's this side agreement all about?

MR. LIEBERMAN: The attorneys' fees letter?

THE COURT: Yes.

MR. LIEBERMAN: With respect to the attorneys' fees letter, it was not something that was anything that counsel wanted or was interested in signing. Defendants -- we understand the Court may have its own restrictions as to the timing of the fees. We certainly understand that and anticipated something like that, but defendants wanted certain restrictions put on the ability to take fees prior to the judgment being final.

So that was something they had negotiated. So, therefore, that was -- we simply had to abide by their demands in order to get this done. So we structured the letter independently that USS had said, if you're already doing this, I want to put in a certain safeguard right away to make sure that claims administration is done rapidly, and they put in their own requirements of that only 10 percent -- there would be a 10 percent remainder of fees held back until 75 percent of the distributions were made.

Your Honor, we've had discussions with USS. We may make an even more stringent proposal to the Court. We know the Court has certainly opined on this.

THE COURT: My practice in the past is that this doesn't go to the side matter distribution, and every case is different. I don't think I've ever approved more than a 50 percent of attorneys' fees distribution at the time of the approval of the settlement, and then I've always had the other 50 percent only after everything else was distributed, the point being that it incentivizes everyone to push to get the rest of the money distributed and also because there is a certain, I think, equity in attorneys not being fully paid until their clients are paid, in this case, the broader clients, the members of the class.

Would you have any problems with that?

MR. LIEBERMAN: Your Honor, if I can just suggest a

slight alteration of that. The concern is that given this is the largest class action settlement in a decade, there will be a lot of people coming out of the woodwork trying to halt the distribution in order to halt the distribution of a large amount of fees to exercise leverage.

So what we would suggest, your Honor, if possible, if we were to do 50 percent and 50 percent but until the claims administrator certificates that it's ready to distribute in case there are any appeals and people just holding this up just to hold it up.

THE COURT: I'm willing to think about that.

MR. LIEBERMAN: We appreciate it, your Honor.

THE COURT: Now, how much is the distribution agent? You're recommending Garden City Group if I recall.

MR. LIEBERMAN: That's correct, your Honor.

THE COURT: And I've had them in other cases. They do a good job, but they're expensive.

How much are they going to charge here?

MR. LIEBERMAN: Your Honor, we've negotiated a cap with them based upon the amount of claims that come in. The cap that we've negotiated is assuming -- which is their estimate, is that there will be one million notices sent out, and there will be a quarter of a million claims that do come in.

If that's the case, their fee would be capped at $6

million, but there's a key caveat in that a part of the paperwork that had been presented to the Court was defendants' insistence on what we believe to be an extraordinarily robust notice program which we have close to 100 newspapers where there will be advertisements made. That was not at lead counsel's request. That was at defendants' insistence.

THE COURT: I think that makes perfect sense because most newspapers are in dire economic straits. They need all the help they can get.

MR. LIEBERMAN: I think this will help the worldwide newspaper business, your Honor.

It will increase that cap by I think about $2 million or $3 million because that was something that came in at the end of the negotiation process.

THE COURT: I don't recall. Was the agreement with Garden City one of the documents you submitted?

MR. LIEBERMAN: No, your Honor.

THE COURT: I will want to see that.

MR. LIEBERMAN: Absolutely.

THE COURT: Now, before selecting Garden City Group, did you shop this around? Did you get any other bids?

MR. LIEBERMAN: We put it out for bid with three other we thought appropriate claims administrators. Garden City did not initially come with the lowest bid, but we made sure that they matched ultimately the lowest bid. We felt that not only

were they best suited for this but they should come at the best price.

THE COURT: Now, I'm a little unclear of who, given the various opt-outs, some of which have been settled with and some of which have not, who the now class consists of.

Do you have any idea? Are these still mostly institutions? Are they mostly individuals? Do you have any feel for that?

MR. LIEBERMAN: We do believe it's mostly institutional investors. That's our understanding. I'd like to -- I'd say overwhelmingly it is institutional investors. Whether or not it's 90 percent or 75 percent, I don't know.

THE COURT: And I raise that in part because I think, to the extent there are any meaningful number of individual investors, and there may not be -- the class notice is something that, from a lawyer's standpoint, it's actually a relatively simple document, simple in the sense of the languages for a lawyer, fairly straightforward.

For someone who is not a lawyer, I think some of the language is obscure. And I think we need to work on that a little bit if there are non-institutional investors, even if there are only 10 percent and certainly if there are 25 percent. I'll come back to that in a minute to give you an example, but I think that's of some concern to me.

To what extent are the members of the class current

shareholders as opposed to past shareholders?

MR. LIEBERMAN: Your Honor, given that they're large institutional investors, we would assume that a significant portion -- the way the investments have worked with respect to Petrobras, why people invested with Petrobras is because they needed to have coverage both in Latin America and in the oil sector.

So, if you're dealing like an entity like USS, they have a mandate to beat a certain index. In order to beat that index, they have to actually have a certain weighting within that index.

So we would presume, to the extent they're institutional investors, which we understand that is the overwhelming majority of the current class, that they are current shareholders as well.

THE COURT: I wonder if that detracts a little bit from your notion that this is such a wonderful settlement if it's really, in effect, current shareholders paying themselves.

MR. LIEBERMAN: Your Honor, I think you can look at it in two ways. One is the PwC portion --

THE COURT: That's a very small portion.

MR. LIEBERMAN: That is the tail wagging the dog, your Honor. With respect to the other portion of the settlement, it's the company paying. The company consists of minority and majority shareholders. So basically every 50

cents that are being paid, a dollar is going to the minority shareholders. They're actually benefiting more because the government --

THE COURT: Right. But my point is this: Let's assume, which I'm sure is not the case but may be close, that the members of the class are all current shareholders. Then, in effect, this is not a $3 billion or $2.95 billion settlement. It's half of that. Right?

MR. LIEBERMAN: Your Honor, what was clear from the trading data is that there was a tremendous selloff in the wake of Lavo Jato by these institutional investors getting out of the stock or significantly selling their positions because of what they'd learn to be the tremendous liability that they incurred, both criminally and civilly. And thereafter, they do make further investments --

THE COURT: Are you saying that the extent of their investment may be very substantially lower? So the 2-to-1 would not be a fair way to look at it under those circumstances.

MR. LIEBERMAN: Lower, and when they purchased again, which is one of the current shareholders after their selloff --

THE COURT: They purchased at a lower number.

MR. LIEBERMAN: Yes, your Honor.

THE COURT: All right. This may be too arduous, but it would be useful -- and maybe the defense counsel is in the

position to give me that information more easily than plaintiffs' counsel, what the members of class -- what they held at the time of the underlying events versus what they hold now and whether what they hold now was largely purchased at a lower price.

In other words, the very things we're just discussing, the data that backs that up.

Is that something you can supply us with?

MR. LIMAN: Your Honor, I don't think so. I don't think Petrobras has records that are put together in that way. We've tried for other purposes to do that kind of analysis, similar types of analyses, and Petrobras just doesn't have those records on an investor by investor basis.

THE COURT: We could make it a condition of qualifying as a class member, but I think that would be unfair and much too arduous. So we'll just let that one go.

But it still is I think somewhat relevant in assessing how much -- to the extent this settlement is the right hand paying the left hand, it's a lesser settlement than a $3 billion settlement. The question is we don't know how many that is.

MR. LIEBERMAN: Your Honor, we don't know how much that is. For the reasons we had said, we think there is an overwhelming portion, more than 50 percent, that is being paid is actually going to the right hand. The right hand is getting

more than is being given out by the left hand.

THE COURT: Did I understand that you're proposing, for settlement purposes, a single class as opposed to multiple classes?

MR. LIEBERMAN: Your Honor, as I understand, it's one settlement class that encompasses both classes.

THE COURT: Yes. That's what I meant.

MR. LIEBERMAN: Yes. Ultimately it's all defined the same way, which makes sense, your Honor, given the settlement context.

THE COURT: I'm not quarreling with that. I just want to make sure because I have to make findings for quasi certification purposes. So, in that sense, both classes still exist, even though they're now combined into a single class for settlement purposes.

MR. LIEBERMAN: That's correct, your Honor. The class members were always the same.

THE COURT: Yes. That's right.

Now let's look for a minute at the notice. Let's assume you're a -- this is the summary notice, which is Exhibit B2 to your motion.

So here I am, Mr. John Jones. I'm rich enough to invest in Petrobras, but I'm not an institution. I don't have some in-house lawyer who can read this stuff for me. So I get this notice, and first I see in the first sentence about 300

words or so -- this is Faulknerian.

It's to "All persons or entities who: A, during the time period between January 22, 2010, and July 28, 2015, inclusive (the class period) purchased or otherwise acquired Petrobras securities, including debt securities issued by PifCo and/or PGF, on the New York Stock Exchange or pursuant to other covered transactions," whatever that may be, "And/or: B, purchased or otherwise acquired debt securities issued by Petrobras, PifCo, and/or PGF and covered transactions directly in, pursuant and/or traceable to, a May 13, 2013, public offering registered in the United States or a March 10, 2014, public offering registered in the United States before Petrobras made generally available to its securities holders an earning statement covering a period of at least 12 months beginning after the effective date of the offerings (August 11, 2014, in the case of the May 13, 2013, public offering and May 15, 2015, in the case of the March 10, 2014, public offering)."

Although actually, there shouldn't be a period there because it's just the subject of the sentence. Who knows what you might have accomplished if you had added a verb and a few other clauses.

Now, every institutional investor, even a small one, would be more than capable of handling that, but I don't know what an individual is going to say, huh? What the heck does

this mean? I just wonder if there isn't an easier way to express that maybe by breaking it down or something.

I got a notice the other day, because I own a 2004 Honda CRV and it's on 180,000 miles -- so this is a free ad for Hondas. It had a Takata airbag.

So first I got the notice saying, you may be part of a class for that settlement. You might take a look at it because I thought it was a model of clarity. It was simple English. It's a simpler case I understand.

I then got the notice a couple days ago saying that if you haven't put in any paperwork showing that you were actually injured by an exploding airbag, you're out of the case. The Lord giveth, and the Lord taketh away.

Then we have here two footnotes just on the first sentence that I just read. The first footnote is something about: "All capitalized terms shall have the same meanings in the stipulation of settlement," which of course you have to go to your website to see, but that's okay.

And the second one is: "The settlement class excludes defendants, current or former officers or directors of Petrobras, members of their immediate family and legal representatives," blah, blah, blah. It goes on at great length.

I'm not saying you don't have to have that, but I do wonder whether there is an easier way, a more simple way, to

express all that. So take a look at that. Without multiplying examples, I think as you go through this, you'll see similar problems, not substantive problems really, just expression.

I do think the one substantive point, which I've already made, is that in addition, as you do, to saying you want 9.5 percent of the settlement for fees, you need to express how much money that is because that, at least, is something I think that any class member would want to see.

MR. LIEBERMAN: Will do, your Honor. Just to make sure that we don't hold up the granting of the order, when should we get it in? Leaving us enough time to get this done.

THE COURT: I would like to issue the order on the hearing we're having today no later than the end of February. So, if you can get it in before then, that would be great.

MR. LIEBERMAN: Your Honor, we'll get it in by Wednesday next week.

THE COURT: Terrific.

Your schedule generally -- I want to go take a look at the schedule for what happens after I give the approval, if I give the approval. It looked generally fine. I'll take a tighter look at that before I issue my order.

Now let me ask defense counsel. I've sometimes seen in agreements between parties where there have been oral understandings, which I've never understood, that the defendant remain silent as to the request for attorneys' fees made by the

plaintiff.

Is there any such agreement here?

MR. LIMAN: There is no such agreement.

THE COURT: Did you think that all those 65 depositions, for example, were needed?

MR. LIMAN: I'm recycling in my head what the 65 depositions were. No. I don't think all of the depositions were needed.

THE COURT: The trouble is -- I don't criticize plaintiff in this respect -- the adversary system really breaks down in these kind of hearings. I think it would be very useful to the Court for you to receive a copy of the time sheets of the plaintiff that constitute their Lodestar calculation and give me your views as someone who obviously lived through the case, as to whether any of those seem to you to have been excessive.

Now, I know that's an awkward position to put you in, but I think it is consistent with the obligation that we all have to the class as a whole. I can't assess that. I can look, and I can see 65 depositions, but I don't know how many of those could have been dispensed with, should have been dispensed with.

I can look at hourly rates for a paralegal and 14 hours for reviewing X document, but I don't know whether X document was 500 pages or two pages. So I think it would be

very useful to have your analysis of that.

MR. LIMAN: I'll be happy to provide it. Your Honor, it's unclear to me what form and shape that takes.

THE COURT: I think you can take just their hourly -- what they provide to the Court in terms of the time sheets, which I assume will be detailed, and then just mark it up in the margins.

It may be questions whether this is justified or something like that. And then I can, if necessary, contact or hold a telephone conference with you and plaintiffs' counsel and have them explain any given entry.

They'll see your comments before we would have any such hearing. So they could respond to it. The Lodestar is not, of course, binding on me. It's just one of the ways to look at the entire request, but I think it's an important one.

MR. LIMAN: Happy to do it, your Honor.

MR. LIEBERMAN: Your Honor, it might be instructive -- we can probably even look at the public record -- as to how much Petrobras spent in investigating the claims on their own and defending the lawsuit. I'm quite sure that they have exceeded the $160 million.

THE COURT: That's a different story. They're not asking for their attorneys' fees, and the federal government couldn't afford their attorneys' fees. So that's a different question.

The point is part of the justification for your 9 1/2 percent is that it's a reasonable multiple of Lodestar given the risk factors involved. So calculating what the Lodestar really is, which may be exactly what you just said -- but it may be less. If it was significantly less, that would be a factor for the Court to consider.

MR. LIEBERMAN: Sure, your Honor. We would also say that the adversarial system remains. We do have quite an adversary here. We have the class plaintiff who wants to get every dollar possible out of this litigation. It's a formidable adversary.

THE COURT: I don't see any adversary. I see two parties that want to get a settlement done and a Court that just likes to ask hard questions.

Let me see if I had any other questions. I think those are the questions I had.

I do have one last thing to raise with you in a minute.

Is there anything else either counsel or any counsel wish to say? We haven't really talked much about the PW portion of the settlement. The fact that it's a much smaller portion makes it easier to deal it, but I'm still going to look at it with the same scrutiny as I do everything else.

So, if there is anything else that counsel wants to say on the PW side, I'll be happy to hear you.

MR. LIEBERMAN: Your Honor, with respect to plaintiffs, there were a significant amount of individual actions that were filed by sophisticated counsel, by sophisticated investors.

Most of them did not even try to get any monies out of PwC. We think not only our prosecution of PwC needed a monetary award, it was also important for accountability in a case like this to do so.

THE COURT: Mr. Liman.

MR. LIMAN: Your Honor, with respect to the date of the final here, my colleague reminds me that under CAFA there's a requirement that there be a 90-day period from the date the notice is sent out.

THE COURT: I thought that was the worst provision in CAFA.

MR. LIMAN: There may be other ones that aren't great.

We also would request -- and I'm somewhat hesitant to do there because I know that your Honor likes to move the docket along -- that there be a period of something like 80 to 90 days set for an opt-out period.

We realize that that's somewhat unusual, that it be that long. But given the fact that there are investors worldwide in this case, we think that that would be appropriate. That would set the date some point shortly after July 4.

THE COURT: I will certainly consider that and thank you for raising it. Although, if they are mostly, if not entirely, institutions, albeit maybe small institutions, they must be used to communicating in a very rapid way. So, even if they live in Azerbaijan, they're on the web all the time. Right?

MR. LIMAN: I would assume that's the case for the institutions. I just don't know how many individuals there are.

THE COURT: I'll think about that anyway.

MR. LIEBERMAN: Your Honor, that's generally fine with us. We'd say the first available date, July 2 and thereafter, we'd like to have a final hearing.

THE COURT: I was thinking we should have a hearing on July 4 because I now realize from what plaintiffs' counsel has told me that the national interest has never been so fully carried out.

Do counsel for PW want to say anything?

MR. PAUZE: Thank you, your Honor. Michael Pauze from King & Spalding.

Judge, of course, PricewaterhouseCoopers Brazil is not Petrobras. As the Court knows, as the external auditor in this case, we're in a very unusual circumstance. It's not unusual for the external auditor to settle for a number that is much smaller.

I think in this case, I think there are a number of factors, your Honor, that make our situation unique here. Of course, the judge dismissed the Section 10(b) claim against PwC Brazil which leaves a Section 11 claim which of course is not insubstantial but I think is much, much smaller than the universe that we had with Section 10(b).

I also think, Judge, we had some very good defenses here. I think the settlement number takes into account, for example, PwC Brazil, of course, wasn't involved in any of the underlying alleged scheme that was alleged in the complaint, that's a focus of the complaint.

In fact, your Honor, PwC Brazil didn't even sort of come on the scene here with respect to Petrobras until after the alleged scheme was over, which I think ended allegedly no later than April of 2012, and our first audit opinion didn't come out until February of 2013.

You know, also, your Honor, as the external auditors, I think we had a very good defense. We did what an audit firm ought to do under these circumstances. Our lead engagement partner was deposed. We think he was a very formidable witness. We think he came across as a straightforward, very engaged, knowledgeable straight shooter.

We had our expert deposed, almost 30 years of experience in auditing. We think he persuasively made the case that the method by which the cartel here concealed the

underlying fraud made it such that even a good audit couldn't uncover it. So we think we had some good defenses here, Judge. We also had I think a very strong negative causation defense.

THE COURT: So you've convinced me. I approve your part of the settlement because there's no doubt that it's unfair to you and we should proceed to trial where your chances of winning, as I understand it, are 99.9 percent.

MR. PAUZE: If that were the case, Judge, we wouldn't be standing here. We certainly recognize the substantial cost of a trial, and we certainly recognize the risk. We think, under those circumstances, it's more than fair.

THE COURT: Did any of the individual plaintiffs themselves, the class representatives, want to say anything? You don't have to, but you're welcome to if you wish to.

Okay. The last question I have was this -- we'll clear the courtroom, and then you can tell me whether you want to do this or not. With the consent of all counsel, I had invited down my class on class actions from Columbia Law School. That's that incredibly good-looking group that you see here in the jury box.

I told them in advance, in a moment of weakness, that the lawyers in this case were some of the best lawyers in the United States, if not in the world. So now they want to hear from you.

So what I thought -- feel free to say no -- is we

could clear the courtroom and then, on a strictly informal basis, obviously no record -- not discussing this case at all -- I won't permit anyone to discuss this case, but I think members of my class would be very interested to hear what it's like to be a plaintiffs' securities lawyer, what it's like to be a defense lawyer. I think it would be a real educational value for them.

So I was hoping you guys could agree. I didn't mean to spring it on you at the last minute, but if you would be agreeable to that, I would be most grateful, and they would be most grateful indeed because they would learn a lot.

MR. LIEBERMAN: It's certainly agreeable with plaintiff.

MR. LIMAN: It's certainly agreeable with defendants. If I may ask Mr. Lieberman one question.

(Counsel conferred)

MR. LIMAN: I've got a couple family members here. If they could be permitted to stay.

THE COURT: Of course. I don't hold to the rumor that I've heard that this is the only time they've ever seen you.

Thank you all very much. Everyone else should leave, but the lawyers remain. None of this will be about the case. It will be other things. Thanks again. For everyone else's purpose, the court is adjourned, and you can leave.

(Adjourned)